

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans.

R. 12-03-014
(Filed March 22, 2012)

**OPENING COMMENTS OF MARIN CLEAN ENERGY
ON TRACK 3 PROPOSED DECISION MODIFYING LONG-TERM
PROCUREMENT PLANNING RULES**

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1. The Commission should clarify that the IEPR or the CCA's BNI are only two data points in arriving at an IOU's estimation of reasonable levels of CCA departing load.
2. The Commission should utilize methodology implemented in D.04 -12-048 to provide more accurate assumptions about CCA departing load.
3. The Commission should only utilize the IEPR in order to determine CCA load if the CEC has explicitly included CCA load.
4. The BNI process is an inappropriate tool for forecasting CCA departing load.
5. Reliance of the BNI process fails to capture greater trends of departing load, such as a load projected to leave more than a few years in the future.
6. CCA projected departures should be utilized to better tailor IOU procurement to reasonable projections of load.
7. When CCA load is reflected in the IOUs' procurement plans, IOUs should modify their procurement accordingly so as to prevent stranded costs.
8. The PD should be revised to state, "CCA customers would not be subject to non - bypassable charges for procurement costs incurred by the IOU after the date the bundled plan is approved which reflects the CCA load."
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I. INTRODUCTION

These opening comments of Marin Clean Energy (“MCE”) on the Track 3 Proposed *Decision Modifying Long-term Procurement Planning Rules* dated January 28, 2014 (“PD”) of Administrative Law Judge (“ALJ”) Gamson, is submitted in accordance with Rule 14.3 of the California Public Utilities Commission’s (“Commission” or “CPUC”) Rules of Practice and Procedure. Since Monday, February 17, 2014 was a California state holiday, these comments are timely filed.

MCE supports the PD and issues these comments to clarify issues pertaining to Community Choice Aggregators (“CCAs”). Specifically, these comments address four issues: (1) the need for investor-owned utilities (“IOUs”) to reflect reasonable assumptions regarding CCA departing load in the procurement plans, and revise their procurement accordingly; (2) the need for additional oversight of IOU procurement, particularly for cost allocation mechanism (“CAM”) eligible procurement; (3) the need for additional clarifications surrounding CAM; and (4) the need to revise the confidentiality requirements for IOU procurement.

II. CLARIFICATIONS ARE NEEDED TO ENSURE CCA LOAD DEPARTURES ARE APPROPRIATELY REFLECTED IN FORECASTS AND PROCUREMENT

MCE thanks the Commission for addressing the need for CCA loads to be appropriately reflected in the IOUs' long-term procurement plans ("LTPPs") and subsequent procurement. Specifically, MCE strongly supports the PD's statement that:

We agree with the concept expressed by most parties that the IOUs should plan for reasonable amounts of departing load in their bundled plans and then only procure for the assumed amounts of retained bundled load.¹

However, as drafted, the PD requires two clarifications to appropriately reflect CCA load departures in IOU forecasts and in IOU procurement.

- **First**, the IOUs must use the best available information to develop their forecasts.
- **Second**, once these forecasts have been reflected in the IOUs' LTPPs, the IOUs should modify their procurement accordingly.

A. The Commission and IOUs Must Use Best Available Information Sources of Departing Load Data to Arrive at Estimates of Reasonable Levels of CCA Departing Load

MCE strongly supports the Commission's requirement that the IOUs "shall estimate reasonable levels of expected Direct Access (DA) and Community Choice Aggregation (CCA) departing load over the 10-year term of the IOUs bundled plans ..."² However, the Commission also makes reference to two data points of reference – the California Energy Commission's ("CEC's") Integrated Energy Policy Report ("IEPR") or in a CCA's Binding Notice of Intent ("BNI") – both of which have significant flaws, discussed below.³ As such, consistent with prior

¹ PD at 16.

² PD at 2.

³ For example, the PD at 2 provides:

(footnote continued)

LTPP proceedings, where reference is made to the IEPR and/or the BNI processes, the Commission should clarify that those are only two data points in arriving at an IOU's estimation of reasonable levels of CCA departing load. The Commission should utilize a number of other factors, such as CCA historical load growth, the filing of a CCA's implementation plan, and a working knowledge of the communities pursuing CCA through either formation or expansion of an existing CCA.

1. *Prior LTPPs have required using the best available information to arrive at IOU assumptions for departing CCA load*

LTPP proceedings require, as a matter of course, arriving at reasonable assumptions regarding procurement needs in the coming years. These needs include assumptions on customer demand, electric supply (such as high or low hydroelectric years), departing load and others. MCE supports consistency across LTPPs in these requirements. However, while CCA at one point was included in LTPP assumptions, the emphasis on "getting the numbers right" for CCA has waned in recent years. For this reason, MCE recommends that the Commission return to more accurate assumptions about CCA departing load. Specifically, on Attachment 1 hereto, MCE provides the methodology used in D.04-12-048. Under this approach, for CCA load departures, the IOUs would use the following criteria:

- ***Medium-Load Plan Scenario*** : The IOUs are to use their "best estimate of how it would prepare to meet the needs it believes ultimately will come to be."⁴

Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (collectively, the IOUs) shall estimate reasonable levels of expected Direct Access (DA) and Community Choice Aggregation (CCA) departing load over the 10-year term of the IOUs bundled plans, using information provided by the California Energy Commission and/or by a CCA in its Binding Notice of Intent.

⁴ D.04-12-048 at 25.

- ***High-Load Plan Scenario*** : The IOUs should assume “a modest development of CCA.”⁵
- ***Low-Load Plan Scenario*** : The IOUs should “assume aggressive CCA development.”⁶

This approach will ensure consistency with past Commission precedent and will lead to more accurate forecasting and procurement by the IOUs, avoiding improper and/or inefficient procurement outcomes.

2. *The Commission should not utilize IEPR unless it includes CCA load*

MCE notes that to date, CCA load has not yet been reflected in the IEPR. For this reason, the PD’s references to CCA loads as reflected in the IEPR should be seen as forward-looking in nature until such time as CCA loads are reflected therein. MCE has been actively working with the CEC to ensure CCA loads are incorporated into the IEPR. Furthermore, since the IEPR has significant and direct impacts on the Commission’s LTPP proceedings, MCE requests that the Commission should only utilize the IEPR in order to determine CCA load if the CEC has explicitly included CCA load.

3. *The BNI process is an inappropriate tool for forecasting CCA departing loads*

The PD also makes reference to utilizing information from the BNI process to reflect CCA departing load:

For CCAs specifically, the Commission has adopted an Open Season and Binding Notice of Intent (BNI) process to trigger the exclusion of potential CCA load from IOU bundled procurement.⁷

⁵ D.04-12-048 at 25.

⁶ D.04-12-048 at 26.

⁷ PD at 16.

The BNI process is not an appropriate metric for appropriately reflecting CCA departing load. The BNI process was developed by the Commission in D.05 -12-041. At that time, the IOUs were supportive of the idea of CCA, and the Commission leveraged this cooperative moment by requesting that an IOU and a CCA negotiate a date where customers would be transitioned over to CCA service. In that way, the IOU would plan for the CCA's departure.

Since that time, the IOUs have changed their stance on CCA from one of support to one of opposition, and the BNI process has been used by the IOUs to refuse to incorporate CCA load into projections. For example, when MCE launched, PG&E "pulled out all the stops" in its efforts to prevent the agency from launching service. PG&E shareholders spent over \$46 million on Proposition 16 to stop CCA, and an additional \$4.2 million in marketing, lobbying and other efforts in Marin County to stop the launch of MCE.⁸ Concurrently, PG&E refused to reflect projections of MCE departing load unless MCE were to provide assurances to PG&E that it would launch in a BNI. The consequence is that rather than incorporating reasonable expectations of departing load – thereby reducing stranded costs – such unnecessarily "stranded" costs were then borne by CCA customers through non-bypassable charges such as the power charge indifference adjustment ("PCIA").

As such, reliance on the BNI process violates Commission requirements that the costs recovered from departing load be "unavoidable." Specifically, D.04-12-046 states that: "Section 366.2(d)(1) of AB 117 provides that the costs associated with CCA's procurement of power for local residents and businesses must not require remaining utility customers to assume additional costs, that is, those power procurement costs that would be unavoidable when the utility loses

⁸ For a sense of scale, MCE's entire multi-year budget to launch the agency was approximately \$2.5 million, and of that approximately \$200,000 for communications, which included opt-out notices and other marketing.

customers to the CCA.”⁹ The BNI, for the reasons set forth above, necessarily diverges from what a reasonable assumption of CCA load departure is for a given CCA.

Furthermore, reliance on the BNI process fails to capture greater trends of departing load, such as a load projected to leave more than a few years in the future.¹⁰ One of the objectives of appropriate load forecasting is to minimize inefficient procurement and its related departing load charges. D.04-12-046 continued:

The objective of AB 117 in requiring CCAs to pay a [cost responsibility surcharge (“CRS”)] is to protect the utilities and their bundled utility customers from paying for the liabilities incurred on behalf of CCA customers. Our complementary objective is to minimize the CRS (and all utilities liabilities that are not required) and promote good resource planning by the utilities.¹¹

If the IOUs focus solely on inappropriate short-term metrics (such as the BNI process), they are ignoring available information for meaningful long-term planning and the necessary Commission requirement to promote good resources planning.

B. IOUs Should Adapt Their Procurement Once CCA Departing Load Data Is Reflected in the Bundled Procurement Plans, Not When the CCA Load Departs

MCE also strongly supports using CCA projected departures to better tailor IOU procurement to reasonable projections of load. Specifically, as soon as loads are reflected in the IOUs’ procurement plans, IOUs should modify their procurement accordingly so as to prevent stranded costs. This is succinctly reflected in the PD:

Having been excluded from the bundled portfolio planning scenarios, the forecasted departing DA and CCA load would not be subject to non-bypassable

⁹ D.04-12-046 at 23, emphasis added.

¹⁰ These trends of load departures have been reflected for municipal departing load (“MDL”).

¹¹ D.04-12-046 at 29, emphasis added.

charges for any incremental stranded procurement costs incurred by the IOUs for the period after the date of departure assumed in their approved bundled plans.¹²

However, there is also language in the PD which should be clarified to reflect this concept. Specifically, the PD also asserts that “ the forecasted Direct Access and Community Choice Aggregation departing load shall not be subject to non -bypassable charges for any incremental stranded procurement costs incurred by the IOUs for the period after the date of departure assumed in their approved bundled plans .”¹³ This text should be revised to state that CCA customers would not be subject to non -bypassable charges for procurement costs incurred by the IOU after the date the bundled plan is approved which reflects the CCA load . For example, if a bundled procurement plan is approved in 2015 that assumes a 2020 CCA departure, the CCA should only be responsible for procurement prior to 2015 since at that time the IOU should be modifying its procurement.

III. ADDITIONAL OVERSIGHT IS NECESSARY REGARDING IOU CONTRACTING FOR CAM ELIGIBLE RESOURCES

MCE notes that additional oversight of IOU contracting is required, at a minimum in circumstances where “the utilities to engage in bilateral negotiated contracts for capacity and energy from power plants where the purpose is to enhance local area reliability.”¹⁴ This authorization for negotiation of contracts where there is a local area reliability need was developed prior to the implementation of CAM; that is, only bundled customers paid the costs of these contracts. Without additional oversight, other load-serving entities that are subject to CAM are unable to predict what resources may come on line and be assigned to them in the future . As

¹² PD at 17.

¹³ PD at 2.

¹⁴ PD at 42.

such, at a minimum, the Commission should require oversight of “local area reliability” contracts that may be eligible for CAM treatment through a Tier 3 Advice Letter or Application.

IV. MCE APPRECIATES THE STEPS TAKEN IN THE PD TO IMPROVE THE FAIRNESS OF CAM; HOWEVER, ADDITIONAL REVISIONS ARE REQUIRED TO ADDRESS IMPACTS OF CAM ON CCA

MCE thanks the Commission for taking steps to address the issues raised by CAM through the LTPP. MCE acknowledges that this will be an iterative process to incorporate appropriate rules to promote fairness surrounding CAM issues. In this section, MCE: (1) requests that the impacts and requirements of Senate Bill (“SB”) 790 (2011) with regards to CAM be more extensively addressed in the PD; (2) appreciates the greater clarification on the limits of the applicability of CAM when procurement is undertaken pursuant to a bundled procurement plan; (3) requests that the Commission acknowledge the value of procurement provided by CCA; and (4) supports the PD’s finding that CAM should be limited to a single service territory.

A. Senate Bill 790 Requires a Higher Bar to Grant CAM than Reflected in the PD

PD states that SB 790 “codified the Commission requirement that the costs to ratepayers for CAM procurement must be allocated to ratepayers in a ‘fair and equitable’ manner.”¹⁵ The PD, however, oversimplifies the additions and protections for CCAs set forth in SB 790.

1. Section 365.1(c)(2)(B) requires that the Commission ensure that reliability criteria are met

In addition to requiring costs to be “fair and equitable,” Section 365.1(c)(2)(B)¹⁶ also requires:

¹⁵ PD at 47.

¹⁶ All section references are to the Public Utilities Code (“Code”) unless otherwise indicated.

If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. The commission shall allocate the costs of those generation resources to ratepayers in a manner that is fair and equitable to all customers, whether they receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider.

This section of the Public Utilities Code places an additional burden on the Commission to “ensure generation resources” that receive CAM treatment “meet a system or local reliability need in a manner that benefits all customers of the electrical corporation.”¹⁷

2. *Section 380(b) requires that the Commission provide CCAs with autonomy to serve their own load with resource adequacy*

Section 380 added the following requirement:

- (a) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements for all load-serving entities.
- (b) In establishing resource adequacy requirements, the commission shall achieve all of the following objectives: ... (4) Maximize the ability of community choice aggregators to determine the generation resources used to serve their customers.

In this way, SB 790 provides additional protections to CCA autonomy to serve its own customers with resource adequacy, rather than having CAM imposed.

3. *Section 380(h) provides CCAs with procurement autonomy for generation resources*

Similarly, Section 380(h) states

- (h) The commission shall determine and authorize the most efficient and equitable means for achieving all of the following:... (5) Ensuring that community choice aggregators can determine the generation resources used to serve their customers.

Beyond simply the resource adequacy rules and criteria, CCAs are also assured general procurement autonomy. MCE has used this autonomy to bring on new, clean resources to the grid through long-term power purchase agreements.

¹⁷ Section 365.1(c)(2)(B).

Taken as a whole, these sections of the Code provide greater limitations on the applicability of CAM on CCAs. MEA recommends that the PD reflect these changes in its discussion of CAM (PD Section 8.3.1) to provide a more complete explanation of the impacts of SB 790 on CAM.

B. The PD Rightly Finds that Procurement on Behalf of Bundled Customers Should Not Receive CAM Treatment

MCE thanks the Commission for acknowledging the exponential growth of the use of CAM, and for beginning to place more clear parameters around the use of CAM.¹⁸ MCE supports the Commission’s statements surrounding the limitations on the applicability of CAM. Specifically, MCE supports the PD’s finding that “bundled procurement undertaken pursuant to a utility’s AB 57 bundled procurement plan is normally not subject to the CAM.”¹⁹

CAM originated as a tool used to incorporate incremental reliability needs into the system not otherwise reflected in the bundled procurement plans of the IOUs. CAM was not intended to serve as a price hedge or procurement backstop for bundled procurement. However, as the use of CAM has exploded in recent years, clear statements surrounding the parameters and requirements of CAM by the Commission have been lacking. MCE supports the Commission’s initial steps to provide clarity on the extent of use of CAM.

C. The Commission Must Take Steps to Appropriately Reflect the Value of New Resources Brought Online by CCAs

While the PD has begun to reflect certain limits on the appropriateness of CAM, the PD continues to take an IOU-centric approach and ignores the benefits CCA has brought to procurement and the grid. The PD asserts: “ Currently there are several different ways that

¹⁸ PD at 49.

¹⁹ PD at 55.

utilities procure capacity on behalf of the customers in their service territory, both bundled and unbundled,” and raises several examples, including energy efficiency, of services and benefits provided by the IOU to all customers.²⁰ However, what remains unsaid in the PD is that benefits are also provided by CCA. MCE procures capacity and provides resources which benefit both bundled and unbundled customers. These include: procurement of new resources through long-term contracts, energy efficiency programs, and others. MCE’s long-term contracts benefit all customers through grid reliability, our energy efficiency programs are offered to both bundled and unbundled customers. The PD merely highlights what a “one way street” the CAM has become, acknowledging solely the resources of the IOUs, and none of the resources of CCA.

The PD asserts: “To our knowledge, ESPs and CCAs have not engaged in such long-term infrastructure procurement, except perhaps in the RPS context. IOUs, ESPs and CCAs each meet their own individual RPS procurement requirements, and the costs of those contracts are not normally subject to CAM treatment.”²¹ MCE has, and will continue to, bring new resources to the grid that serve reliability needs. This is extensively outlined in MCE’s Integrated Resource Plan, and is supported by the new long term contracts – both for bundled products, such as (landfill gas to energy) baseload power, and long-term (geothermal) resource adequacy. Simply because a CCA chooses reliable new resources which also are RPS, does not mean that such resources should be excluded from what new resources should be on the grid. For example, MCE’s recent long-term contract for new geothermal resource adequacy does not count toward its RPS goals, however, the resource does provide long-term reliability on the grid. Furthermore, MCE’s procurement well exceeds the RPS requirements of the Commission. Bringing green

²⁰ PD at 47.

²¹ PD at 55.

reliable resources on the grid rather than gas-fired resources should not be punished by the Commission. Rather, a CCA's resources should represent self-provision of resource adequacy to offset CAM.

D. MCE Supports the PD's Geographic Limitations on CAM Costs

Lastly, MCE supports the PD's clarification regarding the geographic restrictions of CAM obligations. The PD provides: "We find it reasonable to require each IOU to manage the reliability of its own service area. ... This proposition seems to violate principles of cost causation, and creates possibility of excess procurement."²² MCE finds that this approach is administratively straightforward and does not result in cross-subsidization across IOU service territories.

V. RULES REGARDING CONFIDENTIALITY OF IOU CONTRACTS REQUIRES FURTHER REVIEW AND TRANSPARENCY

MCE supports the PD's support of transparency in IOU procurement. Specifically, MCE supports the PD's position that:

Careful thought is required to balance the interest of market sensitivity of certain pricing and contractual terms between the utilities and their counterparties, with the benefits of increased transparency for market forecasting and procurement oversight. The market will benefit from greater reporting of procurement activity, particularly in the forward time frame where it is currently less open to the public.²³

However, certain components of the PD require revision to achieve this objective. Specifically, the PD proposes a process for revising confidentiality with regards to quarterly compliance reports ("QCRs"). This proposal would utilize the Procurement Review Group

²² PD at 61.

²³ PD at 23.

(“PRG”) to evaluate revisions to the QCR.²⁴ The use of the PRG to review these requirements is not sufficient, as the PRG does not include market participants who are affected by IOU procurement. Specifically, the PRG excludes entities such as MCE who are directly impacted by CAM, PCIA and other consequences of IOU procurement. It is not sufficient for confidentiality to be discussed only among those for whom confidential information is already available.

As such, MCE recommends that the discussion regarding what information should be considered confidential should be open to all stakeholders, not simply the PRG.

VI. CONCLUSION

MCE thanks the Commission, ALJ Gamson and Commissioner Florio for their attention to the issues discussed herein.

Respectfully submitted,

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²⁴ PD at 65.

ATTACHMENT 1

2004 LTPP CCA DEPARTING LOAD METHODOLOGY

Excerpt from D.04-12-048 at 25-26, emphasis added:

The June 4, 2004, ACR (Appendix A) directed the IOUs to prepare resource scenarios as follows:

The Medium-Load Plan Scenario . The medium -load plan is to be the preferred resource plan of each utility that meets the needs identified in its Alternative Base Case load-forecast scenario or, if the utility does not choose to file an Alternative Base Case load-forecast scenario, its IEPR -CEC base case scenario. This Plan is to be a utility's best estimate of how it would prepare to meet the needs it believes ultimately will come to be . Though it is not necessary, or even possible, for utilities to specify in detail the placement of new generation facilities that may be needed up to ten years in advance, nor is it possible to indicate the specific paths of transmission additions or upgrades, it is appropriate that the utilities be more specific than they were in the Long-Term Plans submitted in 2003.

High-Load Plan Scenario . The High-Load Plan is not to be an extreme case that has little chance of coming to pass. Rather, it should be a reasonable guess at how great the burden of service could become under high, but not unreasonable assumptions about future load growth. The Plan should be based on the assumption of greater than expected economic growth, resulting in higher load growth, assumption of a modest core -noncore load loss beginning only in 2009, and a modest development of CCA, also beginning in 2009 . The utilities should assume that current levels of DA will continue throughout the time horizon.

Low-Load Plan Scenario . The Low -Load Plan similarly, is not to be an extreme example of conservation and changed priorities of Californians. Rather, it should be based on reasonable but pessimistic assumptions about the economy and on generous assumptions about the development of core -noncore impacts and CCA. Assume aggressive CCA development beginning in 2006, and an aggressive core-noncore scenario from the choices discussed above. Again, assume the continuation of DA service at current levels.

APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Clarifications in PD:

PD at 2 and at 17:

Having been excluded from the bundled portfolio planning scenarios, the forecasted Direct Access and Community Choice Aggregation departing load shall not be subject to non -bypassable charges for any incremental stranded procurement costs incurred by the IOUs for the period after the date of ~~departure assumed in their approved~~ approval of their bundled plans.

PD at 55:

~~To our knowledge, ESPs and CCAs have not engaged in such long-term infrastructure procurement, except perhaps in the RPS context. IOUs, ESPs and CCAs each meet their own individual RPS procurement requirements, and the costs of those contracts are not normally subject to CAM treatment. Similarly, to the extent an ESP or a CCA engages in long-term infrastructure procurement, such procurement provides equivalent reliability benefits for all customers.~~

Findings of Fact:

5. IOUs are expected to plan for reasonable amounts of departing load and then only procure for the assumed amounts of retained bundled load. ~~IOUs appear to take into account their expectations for departing load in their procurement forecasts.~~
6. There may be a difference between the IOU's calculation of departing load and other objective measures of departing load, thus necessitating clarification of rules. The IOUs should use the best available information to make projections of departing load and should procure accordingly.
19. A reevaluation of the purpose and content of quarterly compliance reports would aid Commission staff in making best use of the data in these reports and to increase transparency in procurement undertaken by the utilities.

Conclusions of Law

6. It is in the public interest to promote greater reporting of the information that the Commission regularly collects from the utilities regarding procurement activities, either as aggregate or in specific, to the market and the CAISO, ~~to the extent that confidentiality is not compromised~~ for approved IOU contracts.

8. It is in the public interest to impose greater oversight of medium term bilateral contracts and bilateral negotiated contracts for capacity and energy from power plants where the purpose is to enhance local area reliability . Utilities will now be required to submit Tier II Advice Letters seeking Commission approval to enter into a medium -term bilateral contract if the size of the contract is over 50 MW. Utilities will now be required to submit Tier II Advice Letters seeking Commission approval to enter into a bilateral negotiated contracts for capacity and energy from power plants where the purpose is to enhance local area reliability. ~~This rule is~~ in addition to all previous procurement rules.
12. At this time, no changes to content or timing of quarterly compliance reports should be adopted, pending Energy Division review of opportunities to reduce such reporting to the most useful elements, to eliminate redundant reporting, to increase transparency of utility procurement, and to create guidelines that enable consistency across the utility submissions.
- [New COL, after COL 13]. SB 790 in 2011: codified the commission requirement that the costs to ratepayers for CAM procurement must be allocated to ratepayers in a fair and equitable manner; required that the Commission ensure that CAM resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation, and requires autonomy in resource adequacy and generation procurement by a CCA.